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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

LILLIANA SANCHEZ (dba HERNANDEZ
CLEANING SERVICE and HERNANDEZ
JANITORIAL SERVICE), YOLANDA
CAMEY (dba PROFESSIONAL CCS
CLEANING SERVICE), JUAN CARLOS
RAMIREZ (dba JCR JANITORIAL
SERVICES), JOSE ANTONIO
HERNANDEZ, JUAN CARLOS
HERNANDEZ, JOSE ALFARO, IRMA
GONZALEZ AGUILAR, LUCINA
GALINDO, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

CAPITAL CONTRACTORS INC., a New
York Corporation, dba CAPITAL
BUILDING MAINTENANCE SERVICES
INC.,
Defendants.

Case No. C-14-2622-MMC

CLASS ACTION

FIRST AMENDED COMPLAINT

1. Misclassification as Independent Contractors;
2. Unlawful Terms and Conditions;
3. Failure to Indemnify;
4. Unlawful Deductions and Secret Under Payment of Wages;
5. Failure to Pay Overtime Wages;
6. Failure to Provide Meal Periods;
7. Failure to Provide Rest Periods;
8. Failure to Pay Minimum Wages;
9. Failure To Provide Accurate Itemized Wage Statements;
10. Failure to Pay Timely Wages During Employment;
11. Failure to Pay Wages Due Upon Termination of Employment;
12. Private Attorney General Act; and
13. Unfair Business Practices.

JURY TRIAL DEMANDED

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I. INTRODUCTION

1. Plaintiffs LILLIANA SANCHEZ (dba HERNANDEZ CLEANING SERVICE and HERNANDEZ JANITORIAL SERVICE), YOLANDA CAMEY (dba PROFESSIONAL CCS CLEANING SERVICE), JUAN CARLOS RAMIREZ (dba JCR JANITORIAL SERVICES), JOSE ANTONIO HERNANDEZ, JUAN CARLOS HERNANDEZ, JOSE ALFARO, IRMA GONZALEZ AGUILAR, and LUCINA GALINDO (hereinafter “Plaintiffs”), bring this class action on behalf of themselves and other similarly situated individuals who have worked in California for CAPITAL CONTRACTORS, INC., doing business in California as CAPITAL BUILDING MAINTENANCE SERVICES, INC. (hereinafter “CAPITAL”), at any time beginning April 25, 2010 (four years before the filing of the original complaint in this matter) until resolution of this action.

2. Throughout the relevant time period of this action, CAPITAL has violated the California Labor Code, the California Code of Regulations, the California Business & Professions Code, and the California Civil Code. Plaintiffs, on their own behalf and on behalf of all Class Members, bring this action pursuant to: California Labor Code §§ 201-204, 221, 223, 226.7, 226.8, 432.5, 510, 512, 1174, 1174.5, 1194, 1197, 1198, 2802, and 2804; and California Code of Regulations § 11050 (“Wage Order 5”).

3. Specifically, Plaintiffs’ challenge CAPITAL’S policies of: (1) engaging in a pattern or practice of willfully misclassifying employees as independent contractors; (2) requiring its employees to sign “Independent Contractor Agreements” that contained terms that CAPITAL knew were unlawful; (3) failing to indemnify its employees; (4) taking unlawful deductions from employees’ wages; (5) failing to pay overtime wages; (6) failing to provide meal periods; (7) failing to provide rest periods; (8) failing to pay minimum wages; (9) failing to provide and maintain accurate itemized wage statements; (10) failing to pay timely wages during employment; and (11) failing to pay wages due upon termination.

4. Plaintiffs, on behalf of themselves and all others similarly situated, also seek penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce

1 Development Agency (“LWDA”) for violations of applicable provisions of the California
2 Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved
3 employee on behalf of himself and other current or former employees pursuant to procedures
4 outlined in California Labor Code § 2699.3. On January 21, 2014, Plaintiffs provided written
5 notice by certified mail to the LWDA and Capital, of the specific provisions of the California
6 Labor Code alleged to have been violated, including the facts and theories to support the
7 violations. More than thirty-three (33) days have passed since the mailing of Plaintiffs’ letter,
8 and Plaintiffs have not received a letter from the LWDA stating its intent to investigate their
9 claims.

10 5. Plaintiffs, on behalf of themselves and all others similarly situated, also bring
11 this action pursuant to California Civil Code §§ 1709-1710, for negligent misrepresentation.
12 CAPITAL misrepresented to certain Plaintiffs that classification as independent contractors
13 was proper and Plaintiffs relied upon this representation to their detriment.

14 6. Plaintiffs, on behalf of themselves and all others similarly situated, also bring
15 this action pursuant to California Business & Professions Code §§ 17200-17208, for unfair
16 competition due to CAPITAL’S unlawful violations of the California Labor Code, and Wage
17 Order 5. Plaintiffs, on behalf of themselves and all others similarly situated, seek injunctive
18 relief and restitution under § 17203.

19 7. Plaintiffs, on behalf of themselves and all others similarly situated, also request
20 reasonable attorneys’ fees and costs pursuant to, *inter alia*, the California Labor Code and
21 California Code of Civil Procedure § 1021.5.

22 II. VENUE AND JURISDICTION

23 8. This case was originally filed in the Superior Court of California, County of San
24 Mateo, on April 25, 2014. On June 9, 2014, CAPITAL filed a petition for removal in this
25 Court premised on the Class Action Fairness Act (“CAFA”). On July 11, 2014, the Court
26 issued an order directing Capital to show cause why the action should not be remanded to state
27 court. On September 22, 2014, after the parties briefed the issue of remand, the Court
28

1 discharged its order to show cause finding that jurisdiction was proper in the United States
2 District Court under CAFA.

3 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1398. Capital
4 employs Class Members and transacts business in San Mateo County.

5 **III. THE PARTIES**

6 **A. Defendant**

7 10. CAPITAL provides cleaning services to major industrial clients throughout
8 California, such as hospitals, office buildings, retail stores, and health clubs. CAPITAL is
9 incorporated in New York.

10 11. As more fully set forth herein, CAPITAL contracts with individuals and small
11 businesses to oversee the performance of janitorial services in accordance with a standardized
12 set of policies and procedures. CAPITAL misclassifies these individuals and/or the proprietors
13 of these small businesses as independent contractors (hereinafter referred to as the “ICs”). The
14 ICs perform the janitorial services themselves for CAPITAL’S clients, and/or engage janitorial
15 workers (hereinafter referred to as “JWs”) to perform the janitorial services for CAPITAL’S
16 clients.

17 12. Through these aforementioned standardized policies and procedures, CAPITAL
18 controls the manner and means by which Plaintiffs perform their work. CAPITAL is an
19 “employer” as defined and regulated by the California Labor Code, Wage Order 5, and
20 California common law.

21 **B. Plaintiffs**

22 13. Plaintiff LILLIANA SANCHEZ does business under the fictitious business
23 names of “HERNANDEZ CLEANING SERVICE” and “HERNANDEZ JANITORIAL
24 SERVICE” (hereinafter referred as “SANCHEZ”). SANCHEZ worked for CAPITAL from on
25 or about November 2006 until on or about April 2013 in various counties in California.
26 SANCHEZ worked on CAPITAL’S behalf and in conformance with CAPITAL’S specific
27 directives and instructions, and was misclassified as an IC during that period. SANCHEZ was
28 paid on an hourly basis based on the number of hours CAPITAL preauthorized the JWs to

1 spend cleaning each location. From the amount CAPITAL paid SANCHEZ, SANCHEZ had
2 to pay the wages of each of her JWs, all business expenses, as well as her own wages.
3 SANCHEZ was misclassified by CAPITAL as an IC, and should have been properly classified
4 and treated as a non-exempt hourly employee of CAPITAL.

5 14. Plaintiff YOLANDA CAMEY does business under the fictitious business name
6 of "PROFESSIONAL CCS CLEANING SERVICE" (hereinafter referred as "CAMEY").
7 CAMEY worked for CAPITAL from on or about 1999 until on or about March 2013.
8 CAMEY worked on CAPITAL'S behalf and in conformance with CAPITAL'S specific
9 directives and instructions. In 2011, in conformance with CAPITAL'S specific directives and
10 instructions, CAMEY formed a corporation, PROFESSIONAL CCS CLEANING SERVICES,
11 a California Corporation ("CCS"), through which she continued to perform janitorial services
12 for CAPITAL. CAMEY was paid on an hourly basis based on the number of hours CAPITAL
13 preauthorized the JWs to spend cleaning each location. From the amount CAPITAL paid
14 CAMEY, CAMEY had to pay the wages of each of her JWs, all business expenses, as well as
15 her own wages. CAMEY was misclassified as an IC by CAPITAL, and should have been
16 properly classified and treated as a non-exempt hourly employee of CAPITAL.

17 15. Plaintiff JUAN CARLOS RAMIREZ does business under the fictitious business
18 name of "JCR JANITORIAL SERVICES" (hereinafter referred as "RAMIREZ"). RAMIREZ
19 worked for CAPITAL as an IC from on or about 2007 until on or about February of 2013 in
20 various counties in California. RAMIREZ worked on CAPITAL'S behalf and in conformance
21 with CAPITAL'S specific directives and instructions. RAMIREZ was paid on an hourly basis
22 based on the number of hours CAPITAL preauthorized the JWs to spend cleaning each
23 location. From the amount CAPITAL paid RAMIREZ, RAMIREZ had to pay the wages of
24 each of his JWs, all business expenses, as well as his own wages. RAMIREZ was
25 misclassified as an IC by CAPITAL, and should have been properly classified and treated as a
26 non-exempt employee of CAPITAL.

27 16. Plaintiff JOSE ANTONIO HERNANDEZ (hereinafter referred as "JOSE
28 HERNANDEZ") worked as a JW from on or about December 2009 until on or about March

1 2013 in various counties in California. JOSE HERNANDEZ worked on CAPITAL'S behalf
2 and in conformance with CAPITAL'S specific directives and instructions. JOSE
3 HERNANDEZ was paid on an hourly basis for his work as a JW on behalf of CAPITAL. He
4 should have been properly classified and treated as a non-exempt employee of CAPITAL.

5 17. Plaintiff JUAN CARLOS HERNANDEZ (hereinafter referred as "JUAN
6 HERNANDEZ") worked as a JW from on or about December 2010 until on or about
7 November 2012 in various counties in California on CAPITAL'S behalf and in conformance
8 with CAPITAL'S specific directives and instructions. JUAN HERNANDEZ was paid on an
9 hourly basis for his work as a JW on behalf of CAPITAL. JUAN HERNANDEZ should have
10 been properly classified and treated as a non-exempt employee of CAPITAL.

11 18. Plaintiff JOSE ALFARO (hereinafter referred as "ALFARO") worked as a JW
12 from on or about March 2007 until on or about February 2013 in various counties in California.
13 ALFARO worked on CAPITAL'S behalf and in conformance with CAPITAL'S specific
14 directives and instructions. ALFARO was paid on any hourly basis for his work as a JW on
15 behalf of CAPITAL. He should have been properly classified and treated as a non-exempt
16 employee of CAPITAL.

17 19. Plaintiff IRMA GONZALEZ AGUILAR (hereinafter referred as "AGUILAR")
18 worked as a JW from on or about 2009 until on or about February 2013 in various counties in
19 California. AGUILAR worked on CAPITAL'S behalf and in conformance with CAPITAL'S
20 specific directives and instructions. AGUILAR was paid on a salary (i.e. flat-rate) basis for her
21 performance of JW services on behalf of CAPITAL. AGUILAR should have been properly
22 classified and treated as a non-exempt employee of CAPITAL and paid on an hourly basis.

23 20. Plaintiff LUCINA GALINDO (hereinafter referred as "GALINDO") worked for
24 CAPITAL as a JW from on or about March 2007 until on or about April of 2013 in various
25 counties in California. GALINDO worked on CAPITAL'S behalf and in conformance with
26 CAPITAL'S specific directives and instructions. GALINDO was paid on an hourly basis for
27 her work as a JW on behalf of CAPITAL. GALINDO should have been properly classified
28 and treated as a non-exempt employee of CAPITAL.

IV. FACTUAL ALLEGATIONS

A. Summary

21. During the relevant time period, CAPITAL employed, and continues to employ, Plaintiffs and other similarly situated individuals to provide janitorial services.

22. During the relevant time period, CAPITAL required the ICs to sign an “Independent Contractor Agreement” as a condition of employment. The “Independent Contractor Agreement” was drafted by CAPITAL and the ICs had no ability to negotiate the terms.

23. The “Independent Contractor Agreement” purports to classify the ICs as independent contractors so as to conceal the true nature of the relationship between CAPITAL and the ICs: that of employer and employees. Although a large portion of the ICs speak Spanish, and speak only limited English, CAPITAL chose to only provide the “Independent Contractor Agreement” in English.

24. At all times relevant herein, CAPITAL employed Plaintiffs and Members of the Class, potentially hundreds of ICs and thousands of JWs, and relied on them to provide cleaning services for its clients throughout California. CAPITAL misclassified each and every IC as an independent contractor, when, in fact, they were employees of CAPITAL. The ICs engaged JWs to carry out CAPITAL’S tasks. During the relevant period, CAPITAL set strict standards, policies, and procedures, which it applied uniformly, and expected the ICs and JWs to carefully follow. CAPITAL routinely monitored the details of the work of its ICs and JWs to ensure strict adherence to CAPITAL’S standards, policies, and procedures.

25. In turn, the ICs are responsible for cleaning CAPITAL’S clients’ properties and/or supervising the JWs, who clean CAPITAL’S clients’ properties. CAPITAL’S policies and practices require all ICs to be on-call and immediately responsive to CAPITAL’S demands twenty-four (24) hours per day, three hundred and sixty-five (365) days per year. Despite classifying the ICs as independent contractors, CAPITAL mandated that its ICs: (a) purchase CAPITAL uniforms; (b) don CAPITAL uniforms when at a client’s site; (c) purchase and use specific supplies and chemicals from CAPITAL; (d) receive payment via direct deposit only,

1 and pay any and all related fees for that service; (e) follow CAPITAL'S strict instructions as to
2 the number of hours spent cleaning each client's location; (f) report the number of hours spent
3 cleaning each client's location (via a clock-in/clock-out system directly connected to
4 CAPITAL'S headquarter office (hereinafter the "IVR system")); (g) face disciplinary action,
5 including a reduced work schedule, for failure to spend the number of hours set by CAPITAL
6 cleaning each client's location; and (h) obey CAPITAL'S ultimate supervision as to the quality
7 and completion of any given cleaning job. CAPITAL paid, and continues to pay, its ICs at an
8 hourly rate based on the number of hours ICs and/or JWs spend cleaning each location as
9 reported via the IVR system, which CAPITAL monitors on a regular basis. CAPITAL holds
10 ultimate control over all employment decisions with respect to the JWs engaged by the ICs.

11 26. JWs are engaged by, and follow direct orders from, CAPITAL, through the ICs,
12 (who themselves are actually employees of CAPITAL, despite being misclassified as
13 "independent contractors.") CAPITAL uniformly mandates that all JWs: (a) don a CAPITAL
14 uniform; (b) spend the majority, if not all, of their time performing labor-oriented, non-
15 administrative, and non-managerial tasks; and (c) report the hours they work directly to
16 CAPITAL via the IVR system. If the hours reported via the IVR system do not match the
17 number of hours CAPITAL requires JWs to spend at each location, CAPITAL will discipline
18 the JW by reducing the work schedule of the JW. JWs were, and continue to be, paid at an
19 hourly rate and should be properly classified as non-exempt hourly employees of CAPITAL.

20 27. The "independent contractor" arrangement is a sham used by CAPITAL to
21 knowingly and deliberately evade its legal responsibilities to the ICs and JWs.

22 28. At all times relevant herein, CAPITAL directly and/or indirectly paid each
23 Plaintiff and Class Member less than minimum wage for the work that the performed for
24 CAPITAL. CAPITAL failed to satisfy minimum wage requirements, when it failed to pay the
25 named Plaintiffs and Class Members for the required minimum wage for "all hours worked" in
26 performing work which was incidental to cleaning services and their employment (e.g.
27 attending meetings, creating schedules, travelling between job sites, etc.) and consequently
28 underpaid its ICs and JWs for the actual hours each worked. CAPITAL also failed to

1 compensate ICs and JWs for all overtime hours worked, failed to establish a meal and rest
2 break policy that complies with the law, maintained practices and procedures that impeded the
3 ICs' and JWs' right to take meal and rest breaks, failed to provide itemized wage statements,
4 and failed to indemnify ICs and JWs for all business expenses incurred. CAPITAL'S
5 practices, policies and procedures, or lack thereof, violated California and Federal law, and
6 were uniformly applied at the direction of CAPITAL to the detriment of all Class members.

7 **B. Allegations Regarding Independent Contractors ("ICs")**

8 29. Wage Order 5 defines "employer" as any person "who directly or indirectly, or
9 through an agent, for any other person, employs or *exercises control* over the wages, hours, or
10 working conditions of any person." (CCR § 11050(2)(H); emphasis added.) California Labor
11 Code § 3353 defines an "independent contractor" as a "person who renders service for a
12 specified recompense for a specified result, under the control of his principal *as to the result of*
13 *his work only* and not as to the means by which such result is accomplished." (Emphasis
14 added.)

15 30. CAPITAL misclassified SANCHEZ, CAMEY, and RAMIREZ as "independent
16 contractors" during the entirety of their respective employment with CAPITAL.

17 31. In spite of the fact that CAPITAL required SANCHEZ, CAMEY, RAMIREZ,
18 and other ICs to sign "Independent Contractor Agreements," CAPITAL exercised strict control
19 over the details of the work that it directed ICs to perform, and supervised and controlled the
20 means and manner by which the ICs carried out their tasks. CAPITAL also maintained
21 ultimate control over the details of all employment decisions with respect to the crews of JWs
22 engaged through and supervised by ICs. SANCHEZ, CAMEY, RAMIREZ, and other ICs,
23 consistently performed the work of true "employees" during the entirety of their respective
24 engagements with CAPITAL.

25 32. At all times relevant herein, CAPITAL, required, among other things,
26 SANCHEZ, CAMEY, RAMIREZ, and other ICs: (a) remain on-call twenty-four (24) hours
27 per day, three hundred and sixty-five (365) days per year; (b) don, purchase from CAPITAL,
28 and enforce the donning and purchasing of, CAPITAL uniforms (a shirt with CAPITAL logo);

1 (c) purchase from CAPITAL and use specific supplies and chemicals for cleaning the facilities,
2 as dictated by CAPITAL; (d) receive their wages from CAPITAL via direct deposit only, a
3 service for which they were charged; (e) follow CAPITAL'S strict instructions as to the
4 locations of work and the number of hours to be spent cleaning each location; (f) clock-
5 in/clock-out at each location using the IVR computer system; and (g) obey CAPITAL'S
6 ultimate supervision as to the details, manner, and quality of any given cleaning job.

7 33. During the relevant period, CAPITAL kept track of the number of hours that are
8 spent cleaning each location through the IVR system directly connected to CAPITAL'S
9 headquarter office and monitored by CAPITAL on a daily basis. CAPITAL controlled the
10 number of hours ICs spent cleaning each location by preparing the schedules, shifts, and
11 specifically dictating the number of hours to be spent cleaning each location. Similarly, if the
12 number of hours in any given shift/day/week transmitted to CAPITAL via the IVR system did
13 not conform to the hours pre-approved by CAPITAL, then ICs, and ultimately JWs faced
14 negative consequences and punishment that included, among other things, deductions from
15 their wages and changes to their work schedules.

16 34. At all times relevant herein, CAPITAL disciplined and terminated SANCHEZ,
17 CAMEY, RAMIREZ, and other ICs.

18 35. At all times relevant herein, CAPITAL exercised that same dominion and
19 control over every IC that CAPITAL employed.

20 36. The janitorial services SANCHEZ, CAMEY, RAMIREZ, and other ICs
21 performed are a regular and integral part of CAPITAL'S commercial janitorial management
22 business.

23 37. During the relevant period, CAPITAL deliberately misclassified SANCHEZ,
24 CAMEY, and RAMIREZ as "independent contractors" in order to gain an unfair workforce
25 advantage. CAPITAL knew or should have known that such classifications clearly violate the
26 California Labor Code and Wage Order 5 and run afoul of public policy. Furthermore,
27 CAPITAL included terms in the "Independent Contractor Agreements" with SANCHEZ,
28 CAMEY, and RAMIREZ that it knew or should have known were prohibited by law.

1 38. As with SANCHEZ, CAMEY, and RAMIREZ, CAPITAL exercised a uniform
2 policy and practice of misclassifying all California-based ICs for the purpose of gaining an
3 unfair workforce advantage.

4 39. CAPITAL'S uniform policies and practices and strict control over its ICs
5 required the ICs to work overtime regularly. At all times relevant herein, SANCHEZ,
6 CAMEY, RAMIREZ, and other ICs each worked more than eight (8) hours during a single day
7 for CAPITAL and more than forty (40) hours during a single week for CAPITAL. CAPITAL
8 had the ability to monitor and did monitor the hours worked by all ICs, and knew that overtime
9 hours were being worked by the ICs and that those hours were going uncompensated.
10 However, CAPITAL failed to pay the ICs an overtime rate of pay in connection with work they
11 performed on behalf of CAPITAL.

12 40. SANCHEZ, CAMEY, RAMIREZ, and other ICs each travelled between job
13 sites on behalf of CAPITAL. CAPITAL failed to compensate ICs for the travel time expended,
14 or for other time considered by CAPITAL to be "off-the-clock." Thus, the ICs did not receive
15 minimum wage for all hours worked, in accordance with the law, when they travelled between
16 job sites or performed other "off-the-clock" work.

17 41. At all times relevant herein, SANCHEZ, CAMEY, RAMIREZ, and other ICs
18 regularly worked sufficient hours to require that they be provided with rest breaks. However,
19 CAPITAL lacked a policy requiring that ICs be authorized or permitted the amount of rest
20 break time required by law. Rather, CAPITAL'S uniformly applied practice impeded the ICs'
21 right to take rest breaks. As such, SANCHEZ, CAMEY, RAMIREZ, and other ICs were not
22 authorized or permitted the amount of rest break time required by law and missed such breaks.

23 42. At all times relevant herein, SANCHEZ, CAMEY, RAMIREZ, and other ICs
24 regularly worked sufficient hours to require that they be provided with meal breaks. However,
25 CAPITAL lacked a policy requiring that ICs be relieved of all duty for an uninterrupted 30-
26 minute meal period. Rather, CAPITAL's uniformly applied practice impeded the ICs right to
27 take meal breaks. As such, SANCHEZ, CAMEY, RAMIREZ, and other ICs regularly were
28 not relieved of duty for an uninterrupted 30-minute period, as required by law

1 43. CAPITAL also failed to indemnify ICs for necessary expenditures incurred in
2 performing work for CAPITAL, including, but not limited to, mandatory CAPITAL uniforms,
3 CAPITAL-required supplies and materials, mandatorily-incurred direct deposit fees, and
4 tax-related expenses resulting from the “independent contractor” misclassification. In fact,
5 CAPITAL regularly deducted and withheld money from ICs’ wages, for expenses that
6 CAPITAL mandated ICs incur, including but not limited to CAPITAL uniforms, CAPITAL-
7 required supplies and cleaning materials, and direct deposit fees.

8 44. At all times relevant herein, flowing from its failures with respect to the
9 misclassification, compensation, and reimbursement of ICs, as alleged above, CAPITAL has
10 regularly failed to timely issue complete and accurate wage statements to the ICs, including
11 SANCHEZ, CAMEY, and RAMIREZ. Similarly, CAPITAL has consistently failed to timely
12 remit final payment in full to ICs who no longer work with CAPITAL, including SANCHEZ,
13 CAMEY, and RAMIREZ.

14 45. CAPITAL’S conduct, as alleged herein, has caused SANCHEZ, CAMEY,
15 RAMIREZ, and other ICs to suffer damages including, but not limited to, loss of wages and
16 compensation. CAPITAL is liable to SANCHEZ, CAMEY, RAMIREZ, and other ICs for
17 failing to pay overtime wages, failing to relieve ICs of their duties for uninterrupted 30-minute
18 period(s), failing to authorize and permit rest breaks, failing to pay all wages owed on each pay
19 period, failing to provide timely and accurate wage statements, failing to pay all wages owed
20 upon termination, failing to indemnify them for expenses CAPITAL mandated that they incur,
21 tax-related expenses resulting from the “independent contractor” classification, and unlawful
22 deduction and withholding of money from ICs’ wages for incurred expenses and unfair
23 competition.

24 46. SANCHEZ, CAMEY, and RAMIREZ (hereinafter collectively referred to as
25 “IC Class Representatives”) are members of and seek to be the representatives for the Class of
26 similarly situated ICs who all have been exposed to, have suffered, and/or were permitted to
27 work under, CAPITAL’S unlawful employment practices as alleged herein.
28

1 **C. Allegations Relating to Janitorial Workers (“JWs”)**

2 47. Wage Order 5 defines “employer” as any person “who directly or indirectly, or
3 through an agent, for any other person, employs or exercises control over the wages, hours, or
4 working conditions of any person.” (CCR 11050(2)(F).

5 48. At all times relevant herein, CAPITAL was the JWs employer in that CAPITAL
6 exercised control over the wages, hours, and working conditions of each of the JWs.

7 49. At all times relevant herein, CAPITAL has held ultimate control over the
8 manner and details of the cleaning jobs performed by JWs at each location directly and/or
9 indirectly by and through its ICs. At all times relevant herein, CAPITAL has dictated which
10 JW must be terminated, the number of JWs to perform each job, and the total number of hours
11 each JW is allowed to work on a given cleaning job. Often, one of CAPITAL’S non-IC
12 employees will visit the job sites to review the JWs’ work, and declare certain JWs or aspects
13 of the job unsatisfactory. A JW found by CAPITAL to be performing an unsatisfactory job
14 will face consequences including termination of his/her employment. At all times relevant
15 herein, CAPITAL typically remits payment to the IC for disbursement to JWs. Nonetheless,
16 when CAPITAL dismisses an IC – or when an IC is otherwise unable to remit payment –
17 CAPITAL remits payment directly to its JWs.

18 50. At all times relevant herein, CAPITAL has maintained ultimate control over the
19 JWs’ work, approving the number of hours JWs spend cleaning each location by means of
20 preparing the shift schedules and by dictating the number of hours to be spent cleaning each
21 location. When a JW begins cleaning at a CAPITAL client’s location, s/he is required by
22 CAPITAL to clock-into the IVR system, which transmits the JW’s arrival data directly to
23 CAPITAL. When a JW concludes the cleaning at CAPITAL client’s location, s/he is required
24 to clock-out of the IVR system, which then transmits the departure data directly to CAPITAL.
25 The IVR system enables CAPITAL to monitor which JW worked when, the JWs’ hours,
26 whether the JW should have received a meal or rest break, and whether the JW worked
27 overtime.
28

1 51. If the number of hours in any given shift/day/week transmitted to CAPITAL via
2 CAPITAL'S IVR system do not comport with the hours pre-approved by CAPITAL, then ICs
3 and JWs face negative consequences and punishment, namely, reduced hours and/or removal
4 from jobs/locations.

5 52. The services Plaintiffs JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO,
6 AGUILAR, and GALINDO and other JWs performed are a regular and integral part of
7 CAPITAL'S business.

8 53. At all times relevant herein, CAPITAL required Plaintiffs JOSE HERNANDEZ,
9 JUAN HERNANDEZ, ALFARO, AGUILAR, GALINDO and other JWs to: (a) clock-
10 in/clock-out of the IVR system; (b) answer to the CAPITAL supervisors (both ICs and other
11 employees of CAPITAL); (c) wear a CAPITAL uniform; and (d) spend the bulk of their time
12 performing labor-oriented, non-administrative, and non-managerial tasks in connection with
13 work performed on behalf of CAPITAL.

14 54. CAPITAL'S uniform practices and treatment of its ICs, and, therefore, its JWs,
15 required the JWs to regularly work overtime. At all times relevant herein, Plaintiffs JOSE
16 HERNANDEZ, JUAN HERNANDEZ, ALFARO, AGUILAR, and GALINDO and other JWs,
17 regularly worked more than eight (8) hours in a single day and/or more than forty (40) hours in
18 a single week on behalf of CAPITAL. CAPITAL had the ability to monitor and did monitor the
19 hours worked by all JWs, and, therefore, knew or should have known that these overtime hours
20 were being worked and that these hours were going uncompensated. In spite of this, Plaintiffs
21 JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO, AGUILAR, and GALINDO and
22 other JWs, never received compensation at any overtime rate of pay in connection with any
23 work they performed on behalf of CAPITAL.

24 55. At all times relevant herein, Plaintiffs JOSE HERNANDEZ, JUAN
25 HERNANDEZ, ALFARO, AGUILAR, and GALINDO and other JWs regularly worked
26 sufficient hours to require that they be provided with rest breaks. However, CAPITAL lacked
27 a policy requiring that JWs be authorized or permitted the amount of rest break time required
28 by law. Rather, CAPITAL'S uniformly applied practice impeded the JWs right to take rest

1 breaks. As such, Plaintiffs JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO,
2 AGUILAR, and GALINDO and other JWs were not authorized or permitted the amount of rest
3 break time required by law and missed such breaks.

4 56. At all times relevant herein, Plaintiffs JOSE HERNANDEZ, JUAN
5 HERNANDEZ, ALFARO, AGUILAR, and GALINDO and other JWs regularly worked
6 sufficient hours to require that they be provided with meal breaks. However, CAPITAL lacked
7 a policy requiring that JWs be relieved of all duty for an uninterrupted 30-minute meal period.
8 Rather, CAPITAL'S uniformly applied practice impeded the JWs right to take meal breaks.
9 As such, Plaintiffs JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO, AGUILAR, and
10 GALINDO and other JWs regularly were not relieved of duty for an uninterrupted 30-minute
11 period as required by law

12 57. At all times relevant herein, Plaintiffs JOSE HERNANDEZ, JUAN
13 HERNANDEZ, ALFARO, AGUILAR, and GALINDO and other JWs did not receive
14 compensation for all hours they worked and did not receive compensation for any of the time
15 spent travelling between job sites on behalf of CAPITAL. Thus, Plaintiffs JOSE
16 HERNANDEZ, JUAN HERNANDEZ, ALFARO, AGUILAR, and GALINDO and other JWs
17 did not receive minimum wage for all hours worked, in accordance with the law, when they
18 travelled between job sites or performed other "off-the-clock" work.

19 58. At all times relevant herein, CAPITAL, often mandated that specific JWs clean
20 specific locations, requiring the JWs to travel between CAPITAL'S clients' locations.
21 Plaintiffs JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO, AGUILAR, and GALINDO
22 and other JWs were required to bear the expense of travelling between CAPITAL'S clients'
23 locations. CAPITAL did not indemnify its JWs in connection with this necessary expenditure.

24 59. At all times relevant herein, Plaintiffs JOSE HERNANDEZ, JUAN
25 HERNANDEZ, ALFARO, AGUILAR, and GALINDO and other JWs, were required by
26 CAPITAL to wear CAPITAL uniforms (a shirt with CAPITAL logo), at all times while
27 performing JW labor. CAPITAL required the named Plaintiffs and other JWs to bear the
28 expense of their CAPITAL uniforms. The named Plaintiffs and other JWs were also required

1 by CAPITAL to maintain and launder their CAPITAL uniforms. CAPITAL did not indemnify
2 its JWs in connection with these necessary expenditures.

3 60. At all times relevant herein, flowing from its failures with respect to the
4 compensation and indemnification of JWs, as alleged above, CAPITAL has regularly failed to
5 timely issue complete and accurate wage statements to the JWs, including, without limitation,
6 Plaintiffs JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO, AGUILAR, and
7 GALINDO. Likewise, CAPITAL has consistently failed to timely remit final payments in full
8 to JWs who no longer work with CAPITAL, including, without limitation, Plaintiffs
9 RAMIREZ, JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO, AGUILAR, and
10 GALINDO.

11 61. CAPITAL has consistently failed to fully compensate and indemnify the
12 expenses of the JWs – including, without limitation, Plaintiffs JOSE HERNANDEZ, JUAN
13 HERNANDEZ, ALFARO, AGUILAR, and GALINDO – in order to gain an unfair workforce
14 advantage. CAPITAL knew or should have known that such policies and practices violate
15 California law and clearly run afoul of public policy. Furthermore, the terms CAPITAL
16 included in its agreements with its ICs had adverse effects on JWs and CAPITAL should have
17 known were prohibited by law.

18 62. Plaintiffs JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO, AGUILAR,
19 and GALINDO (hereinafter collectively refer to as “JW Class Representatives”) are members
20 of and seek to be the representatives for the Class of similarly situated JW employees who all
21 have been exposed to, have suffered, and/or were permitted to work under, CAPITAL’S
22 unlawful employment practices as alleged herein.

23 **V. CLASS ALLEGATIONS**

24 **A. Class Definition**

25 63. Plaintiffs bring this action, on behalf of themselves and all others similarly
26 situated, as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3). Subject
27 to later amendment as permitted or required by the Court, the classes which Plaintiffs seek to
28 represent are composed and defined as follows:

- **Class I (California-based ICs, represented by SANCHEZ, CAMEY, and RAMIREZ):** All persons who, from April 25, 2010, through the resolution of this matter, have been (a) employed by CAPITAL in the State of California to perform cleaning services at CAPITAL'S clients' properties; and (b) misclassified as an "independent contractor" by CAPITAL while performing cleaning services and/or supervising the performance of cleaning services at CAPITAL'S clients' properties.
- **Class II (California-based, hourly-rate JWs, represented by JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO, and GALINDO):** All persons who, from April 25, 2010, through the resolution of this matter, have: (a) performed the labor of cleaning CAPITAL'S clients' properties on behalf of CAPITAL in the State of California; and (b) received an hourly rate of pay in connection with performing the labor of cleaning CAPITAL'S clients' properties, on behalf of CAPITAL.
- **Class III (California-based, flat-rate JWs, represented by AGUILAR):** All persons who, from April 25, 2010, through the resolution of this matter, have: (a) performed the labor of cleaning CAPITAL'S clients' properties on behalf of CAPITAL in the State of California; and (b) received a flat rate of pay in connection with performing the labor of cleaning CAPITAL'S clients' properties, on behalf of CAPITAL.

B. Numerosity

64. While the precise number of members for each class has not yet been determined, Plaintiffs are informed and believe that each of the three proposed classes includes hundreds of individuals and that membership in Classes II and III could number into the thousands. Joinder of all members of the Class is therefore impracticable.

65. CAPITAL and the ICs possess, control, and/or have custody of documents and information that will enable Plaintiffs to efficiently ascertain the location, number, and identity of the members of the Class. Among other discoverable items, CAPITAL should possess,

control, or have custody of: (a) signed agreements for each of the Members of Class I confirming their respective “independent contractor” misclassifications; (b) documentation and/or data for each of the Members of Classes II and III reflecting the number of hours worked on any given day; and (c) records reflecting payments from CAPITAL to the Members of Classes I, II and III for services rendered, including without limitation payment from CAPITAL to the Members of Class I for disbursement to the proposed Members of Classes II and III.

C. Common Questions of Law and Fact

66. For each of the proposed classes, common questions of law and fact predominate over any individualized questions concerning specific class members.

67. Common questions of law and fact relating to the Members of Class I predominate and include:

- (a) whether CAPITAL intentionally misclassified the ICs as “independent contractors” instead of “employees”;
- (b) whether CAPITAL required its employees to sign “Independent Contractor Agreements” that CAPITAL knew were unlawful;
- (c) the nature and extent of CAPITAL’S supervision and control over the ICs;
- (d) the nature and extent of the duties and responsibilities CAPITAL imposed upon the ICs;
- (e) whether CAPITAL failed to indemnify the ICs’ expenses relating to uniforms, cleaning supplies, and direct deposit fees;
- (f) whether CAPITAL failed to provide and maintain accurate itemized wage statements to the ICs;
- (g) whether CAPITAL took unlawful deductions from the ICs’ wages;
- (h) whether CAPITAL failed to provide meal periods to the ICs;
- (i) whether CAPITAL failed to provide rest periods to the ICs;
- (j) whether CAPITAL failed to provide overtime wages to the ICs;

- (k) whether CAPITAL failed to pay minimum wages to the ICs;
- (l) whether CAPITAL failed to pay travel time compensation to the ICs;
- (m) whether CAPITAL failed to pay timely wages to the ICs during their employment; whether CAPITAL failed to pay wages due to the ICs upon termination; and
- (n) whether CAPITAL'S treatment of the ICs violates Wage Order 5, the California Labor Code, the Civil Code, and/or the Business & Professions Code.

68. Common questions of law and fact relating to the Members of Class II and III predominate and include:

- (a) the nature and extent of CAPITAL'S policies and practices of providing funds to the ICs for disbursement to the JWs;
- (b) the nature and extent of CAPITAL'S supervision and control over the JWs;
- (c) the nature and extent of the duties and responsibilities CAPITAL imposed upon the JWs;
- (d) whether CAPITAL failed to indemnify the JWs' expenses relating to uniforms, cleaning supplies, travel expenses, and direct deposit fees;
- (e) whether CAPITAL failed to provide and maintain accurate itemized wage statements to the JWs;
- (f) whether CAPITAL took unlawful deductions from the JWs' wages;
- (g) whether CAPITAL failed to provide meal periods to the JWs;
- (h) whether CAPITAL failed to provide rest periods to the JWs;
- (i) whether CAPITAL failed to provide overtime wages to the JWs;
- (j) whether CAPITAL failed to pay minimum wages to the JWs;
- (k) whether CAPITAL failed to pay travel time compensation to the JWs;
- (l) whether CAPITAL failed to pay timely wages to the JWs during their employment;

(m) whether CAPITAL failed to pay wages due to the JWs upon termination;
and

(n) whether CAPITAL'S treatment of the JWs violates Wage Order 5, the
California Labor Code, the Civil Code, and/or the Business &
Professions Code.

D. Typicality

69. Each Lead Plaintiff presents claims that are typical of the proposed Class
Members whom said Plaintiff represents.

70. Plaintiffs SANCHEZ, CAMEY, and RAMIREZ were misclassified as ICs
during the Class Period and sustained injuries and damages arising out of and relating to
CAPITAL'S common course of conduct with respect to its ICs, all in violation of the
California laws, statutes, and regulations as herein alleged.

71. Plaintiffs JOSE HERNANDEZ, JUAN HERNANDEZ, ALFARO, and
GALINDO were JWs during the Class Period who were paid on an hourly basis for performing
janitorial services on behalf of CAPITAL, under CAPITAL'S specific supervision and
direction. Each sustained injuries and damages arising out of and relating to CAPITAL'S
common course of conduct with respect to its JWs, all in violation of the California laws,
statutes, and regulations as herein alleged.

72. Plaintiff AGUILAR was a JW during the Class Period who was paid on a salary
(i.e. flat-rate) basis for performing janitorial services on behalf of CAPITAL, under
CAPITAL'S specific supervision and direction. He sustained injuries and damages arising out
of and relating to CAPITAL'S common course of conduct with respect to its JWs, all in
violation of the California laws, statutes, and regulations as herein alleged.

E. Adequacy of Representation

73. Each Lead Plaintiff intends to meaningfully participate in this case and
zealously represent and protect the interests of a proposed class. No Lead Plaintiff holds an
interest that is antagonistic or otherwise divergent from the interests of his or her proposed
class.

1 74. Plaintiffs have retained the representation of competent, well-qualified attorneys
2 on behalf of themselves and the members of the proposed classes. Plaintiffs’ attorneys have
3 substantial experience with litigating employment actions on a class basis.

4 **F. Superiority of Class Action**

5 75. A class action is superior to other available means for the fair and efficient
6 adjudication of this controversy. Individual joinder of proposed class members is not
7 practicable, and questions of law and fact common to each class predominate over any
8 questions affecting only individual members of class. Each proposed class member has been
9 damaged and is entitled to recovery after being subject to unlawful and unfair policies and/or
10 practices which were pervasively perpetrated by CAPITAL against all ICs (Class I) and JWs
11 (Classes II and III).

12 76. No other litigation concerning this controversy has been commenced by or
13 against Class Members, or is pending.

14 77. Class action treatment will allow those similarly situated persons to litigate their
15 claims in the manner that is most efficient and economical for the parties and the judicial
16 system. It is unlikely that any individual proposed class member wishes to individually control
17 a separate action in connection with this matter.

18 78. The proposed class members work in janitorial services and generally lack
19 knowledge of the legal system, intellectual sophistication, and substantial economic resources.
20 As a result, most class members would be deprived of the practical opportunity to pursue their
21 respective individual claims if this matter is not certified as a class action.

22 79. Plaintiffs are unaware of any difficulties likely to be encountered in the
23 management of this case that would preclude its maintenance as a class action. The benefits of
24 maintaining this action on a class basis far outweigh any administrative burden in managing
25 the class action. Conducting this case as a class action would prove far less burdensome than
26 prosecuting individual actions – especially given the strong core of common factual and legal
27 questions.

1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 (Misclassification as Independent Contractors in Violation of California Labor Code § 226.8)

4 80. Plaintiffs SANCHEZ, CAMEY, and RAMIREZ, on behalf of themselves and
5 the IC putative class, re-allege and incorporate herein by this reference the allegations in each
6 and every paragraph above, as though fully set forth herein.

7 81. CAPITAL knowingly and voluntarily misclassified SANCHEZ, CAMEY,
8 RAMIREZ, and other putative Class I members as independent contractors in violation of
9 Labor Code § 226.8.

10 82. As a direct and proximate result of CAPITAL'S unlawful acts and/or omissions,
11 SANCHEZ, CAMEY, RAMIREZ, and other putative Class I members are entitled to recover
12 damages in an amount to be determined at trial, civil penalties, interest thereon, injunctive
13 relief, attorneys' fees, and costs of suit pursuant to Labor Code § 226.8.

14 83. SANCHEZ, CAMEY, and RAMIREZ on behalf of themselves and other Class I
15 members seek an award of all monies owed resulting from CAPITAL'S violations, other
16 damages according to proof, recovery of applicable penalties, interest as allowed by law,
17 reasonable attorney's fees and costs of suit, injunctive relief, and any other permitted remedies.

18 **SECOND CLAIM FOR RELIEF**

19 (Unlawful Terms and Conditions Under California Labor Code § 432.5)

20 84. SANCHEZ, CAMEY, and RAMIREZ on behalf of themselves and the
21 members of putative Class I, re-allege and incorporate by reference the paragraphs above as
22 though fully set forth herein.

23 85. SANCHEZ, CAMEY, RAMIREZ, and other putative Class I members are/were
24 non-exempt employees of CAPITAL under the laws of the State of California within the
25 meaning of California law.

26 86. California Labor Code § 432.5 prohibits an employer from requiring any
27 employee or applicant for employment to agree, in writing, to any term or condition which is
28 known by such employer to be prohibited by law.

87. Through CAPITAL'S conduct during the applicable statutory period including, but not limited to, requiring SANCHEZ, CAMEY, RAMIREZ, and other putative Class I members to sign "Independent Contractor Agreements," which contained terms which CAPITAL knew or should have known were prohibited by law, SANCHEZ, CAMEY, RAMIREZ, and other putative Class I members have suffered, and continue to suffer, substantial losses as a result of the terms or conditions prohibited by law that they were required to agree to, including the use and enjoyment of monies lost as a result of the unlawful terms and conditions, lost interest, expenses and attorney's fees and costs in seeking to compel CAPITAL to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

88. SANCHEZ, CAMEY, and RAMIREZ on behalf of themselves and other Class I members seek an award of all monies owed resulting from CAPITAL'S violations, other damages according to proof, recovery of applicable penalties, interest as allowed by law, reasonable attorney's fees and costs of suit, injunctive relief, and any other permitted remedies.

THIRD CLAIM FOR RELIEF

(Failure to Indemnify in Violation of California Labor Code §§ 2802 and 2804)

89. Plaintiffs, on behalf of themselves and putative Class I, II, and III members, re-allege and incorporate by reference the paragraphs above as though fully set forth herein.

90. Each Plaintiff and putative Class I, II, and III members are/were non-exempt employees of CAPITAL under the laws of the State of California within the meaning of California law.

91. California Labor Code § 2802(a) requires an employer to indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

92. California Labor Code § 2802(c) provides that the term “necessary expenditures or losses” includes all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by California Labor Code § 2802.

1 93. Section 9 of Wage Order 5 (“Uniforms and Equipment”) requires an employer
2 to provide and maintain uniforms an employee is required to wear as a condition of
3 employment. It also provides that an employer is required to provide and maintain tools, and
4 equipment that are necessary for the performance of a job.

5 94. During the relevant period, each Plaintiff and other members of Class I, II, and
6 III, incurred necessary expenditures and losses in direct consequence of the discharge of their
7 employment duties and their obedience of CAPITAL’s demands, including, but not limited to,
8 expenditures for cell phones used to communicate with CAPITAL, cleaning supplies, direct
9 deposit fees, uniforms, laundry, gasoline and/or mileage expenses.

10 95. CAPITAL has failed to reimburse Plaintiffs and the members of putative Class
11 I, II, and III, for necessary business-related expenses and costs including, but not limited to, the
12 purchase and maintenance of uniforms, supplies, tools, and equipment. CAPITAL’s expense-
13 shifting practices are illegal in California.

14 96. Pursuant to California Labor Code § 2804 any contract or agreement, express or
15 implied, made by Plaintiffs and Members of the Class to waive the benefits of Section 2802 or
16 any part thereof, is null and void.

17 97. Plaintiffs, on behalf of themselves and on behalf of putative Class I, II, and III
18 members, seek an award of all monies owed resulting from CAPITAL’S violations, other
19 damages according to proof, recovery of applicable penalties, interest as allowed by law,
20 reasonable attorney’s fees and costs of suit, injunctive relief, and any other permitted remedies.

21 **FOURTH CLAIM FOR RELIEF**
22 (Unlawful Deductions, Repayment of Wages and Secret Underpayment of Wages in
23 Violation of California Labor Code §§ 221 and 223)

23 98. Each Plaintiff, on behalf of themselves putative Class I, II and III members, re-
24 alleges and incorporates by reference the paragraphs above as though fully set forth herein.

25 99. California Labor Code §§ 221 and 223 prohibit an employer from withholding
26 and deducting wages, or other artificially lowering the wage scale of an employee.

27 100. During the relevant period CAPITAL violated California Labor Code §§ 221
28 and 223, and Section 9 of Wage Order 5 (“Uniforms and Equipment”) by requiring each

1 Plaintiff and other putative Class I, II, and III members to pay for certain expenses and
2 employment-related costs such as uniforms and cleaning supplies that are/were the
3 responsibility of CAPITAL. In addition, CAPITAL required each Plaintiff and other putative
4 Class I, II, and III members to work off-the-clock, including time spent travelling between job
5 sites.

6 101. As a direct result of CAPITAL'S violations alleged herein, each Plaintiff and
7 other members putative Class I, II, and III have suffered and continue to suffer, substantial
8 losses including but not limited to the use and enjoyment of such monies, lost interest on such
9 monies and expenses and attorney's fees and costs in seeking to compel CAPITAL to fully
10 perform its obligation under state law, all to their respective damage in amounts according to
11 proof at trial and within the jurisdictional limitations of this Court.

12 102. Plaintiffs, on behalf of themselves and putative Class I, II, and III members,
13 seek an award of all monies owed resulting from CAPITAL'S violations, other damages
14 according to proof, recovery of applicable penalties, interest as allowed by law, reasonable
15 attorney's fees and costs of suit, injunctive relief, and any other permitted remedies.

16 **FIFTH CLAIM FOR RELIEF**

17 (Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510, 1194 and 1198,
18 and Section 3 Wage Order 5, "Hours and Days of Work")

19 103. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
20 re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

21 104. California Labor Code §§ 510 and 1198 and Section 3 of Wage Order 5 ("Hours
22 and Days of Work") provide that employees in California shall not be employed more than
23 eight (8) hours in any workday or forty (40) hours in any workweek unless they receive
24 additional compensation beyond their regular wages in amounts specified by law.

25 105. California Labor Code § 1194 states that "[n]otwithstanding any agreement to
26 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
27 overtime compensation applicable to the employee is entitled to recover in a civil action the
28

1 unpaid balance of the full amount of his minimum wage or overtime compensation, including
2 interest thereon, reasonable attorney's fees and costs of suit."

3 106. During the relevant period, CAPITAL failed to pay each Plaintiff and other
4 putative Class I, II, and III members all overtime wages for all overtime worked.

5 107. As a direct result of CAPITAL'S violations alleged herein, each Plaintiff and
6 other members of putative Class I, II, and III have suffered and continue to suffer substantial
7 losses including, but not limited, to the use and enjoyment of such wages, lost interest on such
8 monies and expenses and attorney's fees and costs in seeking to compel CAPITAL to fully
9 perform its obligation under state law, all to their respective damage in amounts according to
10 proof at trial and within the jurisdictional limitations of this Court.

11 108. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
12 seek an award of all monies owed resulting from CAPITAL'S violations, other damages
13 according to proof, recovery of applicable penalties, interest as allowed by law, reasonable
14 attorney's fees and costs of suit, injunctive relief, and any other permitted remedies.

15 **SIXTH CLAIM FOR RELIEF**

16 (Failure to Provide Meal Periods in Violation of California Labor Code §§ 226.7, 512,
17 and Section 11 of Wage Order 5, "Meal Periods")

18 109. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
19 re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

20 110. California Labor Code §§ 226.7 and 512, and Section 11 of Wage Order 5
21 ("Meal Periods"), prohibit employers from employing a non-exempt employee for more than
22 five hours without a meal period of at least thirty (30) minutes and for more than ten (10) hours
23 without a second meal period. The employee is considered "on duty" and the meal period is
24 considered time worked, unless the employee is relieved of all duty for an uninterrupted thirty
25 (30) minute meal period

26 111. Section 11 of Wage Order 5 ("Meal Periods") provides that a non-exempt
27 employee working more than five hours must be provided a meal period of not less than thirty
28 (30) minutes, except when a work period of not more than six hours will complete the day's
work and the meal period is waived by mutual consent of the employee and employer.

112. During the relevant period, CAPITAL lacked a policy which directly and/or indirectly relieved each Plaintiff and other putative Class I, II, and III members of all duty for uninterrupted thirty (30) minute periods, and, in fact, had practices and procedures that impeded the members of Class I, II, and III, from taking such meal breaks.

113. Pursuant to California Labor Code § 226.7(c), and Section 11 of Wage Order 5 (“Meal Periods”), if an employer fails to provide an employee a meal period in accordance with a state law, the employer shall pay the employee one hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. This penalty is separate from the PAGA penalties discussed below.

114. As a direct result of CAPITAL’S violations alleged herein, each Plaintiff and other members of putative Class I, II, and III have suffered and continue to suffer substantial losses including but not limited to the use and enjoyment of such wages, lost interest on such monies and expenses and attorney’s fees and costs in seeking to compel CAPITAL to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

115. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members, seek an award of all monies owed resulting from CAPITAL’S violations, other damages according to proof, recovery of applicable penalties, interest as allowed by law, reasonable attorney’s fees and costs of suit, injunctive relief, and any other permitted remedies.

SEVENTH CLAIM FOR RELIEF

(Failure to Provide Rest Periods in Violation of California Labor Code § 226.7, and Section 12 of Wage Order 5, “Rest Periods”)

116. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members, re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

117. California Labor Code §226.7, and Section 12 of Wage Order 5 (“Rest Periods”) provide that employers must authorize and permit non-exempt employees to take a rest period at the minimum rate of a net ten (10) consecutive minutes for each four (4) hour work period, or major fraction thereof.

118. During the relevant period, CAPITAL lacked a policy that directly and/or indirectly authorized and permitted each Plaintiff and other putative Class I, II, and III members to take rest periods, and, in fact, had practices and procedures that impeded the members of Class I, II, and III from taking such rest breaks.

119. Pursuant to California Labor Code § 226.7(c), Section 12 of Wage Order 5 (“Rest Periods”), if an employer fails to provide an employee a rest period in accordance with a state law, the employer shall pay the employee one hour of pay at the employee’s regular rate of compensation for each workday that the rest period that the employer failed to authorize or permit.

120. As a direct result of CAPITAL'S violations alleged herein, each Plaintiff and other members of putative Class I, II, and III have suffered and continue to suffer substantial losses including but not limited to the use and enjoyment of such wages, lost interest on such monies and expenses and attorney's fees and costs in seeking to compel CAPITAL to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

121. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members, seek an award of all monies owed resulting from CAPITAL'S violations, other damages according to proof, recovery of applicable penalties, interest as allowed by law, reasonable attorney's fees and costs of suit, injunctive relief, and any other permitted remedies.

EIGHTH CLAIM FOR RELIEF

(Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1197, and 1198,
and Section 4 of Wage Order 5, “Minimum Wages”)

122. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members, re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

123. California Labor Code §§ 1197 and 1198, Section 4 of Wage Order 5 (“Minimum Wages”), and Section 3 of Wage Order 5 (“Hours and Days of Work”) provide that employees be paid at least the applicable minimum wage and overtime wages for regular time and overtime time suffered or permitted to work respectively.

1 124. During the relevant period, CAPITAL directly and/or indirectly paid each
2 Plaintiff and other putative Class I, II, and III members less than minimum wage. CAPITAL
3 further failed to satisfy minimum wage requirements and secretly paid a lower wage while
4 purporting to pay the wage designated by statute or by contract to when it failed to pay the
5 named Plaintiffs and Class members for “all hours worked” in performing work which was
6 incidental to cleaning services (e.g. attending meetings, scheduling employees, commuting
7 between job sites, etc.) and consequently underpaid its ICs and JWs for the actual hours each
8 worked in violation of California Labor Code §§ 1197, and 1198, and Wage Order 5.

9 125. California Labor Code § 1194 states “Notwithstanding any agreement to work
10 for a lesser wage, any employee receiving less than the legal minimum wage or the legal
11 overtime compensation applicable to the employee is entitled to recover in a civil action the
12 unpaid balance of the full amount of his minimum wage or overtime compensation, including
13 interest thereon, reasonable attorney’s fees and costs of suit.”

14 126. As a direct result of CAPITAL’S violations alleged herein, each Plaintiff and
15 other members of California-based ICs and JWs putative Class I, II, and III have suffered and
16 continue to suffer, substantial losses including but not limited to the use and enjoyment of such
17 monies, lost interest on such monies and expenses and attorney’s fees and costs in seeking to
18 compel CAPITAL to fully perform its obligation under state law, all to their respective damage
19 in amounts according to proof at trial and within the jurisdictional limitations of this Court.

20 127. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
21 seek an award of all monies owed resulting from CAPITAL’S violations, other damages
22 according to proof, recovery of applicable penalties, interest as allowed by law, reasonable
23 attorney’s fees and costs of suit, injunctive relief, and any other permitted remedies.

24
25 **NINTH CLAIM FOR RELIEF**

26 (Failure to Provide and Maintain Accurate Itemized Wage Statements in Violation of
California Labor Code §§ 226, 1174, 1174.5, and Section 7 of Wage Order 5, “Records”)

27 128. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
28 re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

1 129. California Labor Code § 226(a) provides that an employer must semimonthly or
2 at the time of each payment of wages, furnish each of his or her employees an accurate
3 itemized statement with the following nine pieces of information: (a) gross wages earned;
4 (b) total hours worked by the employee, except for any employee whose compensation is
5 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
6 Section 515 or any applicable order of the Industrial Welfare Commission; (c) the number of
7 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
8 basis; (d) all deductions; (e) net wages earned; (f) the inclusive dates of the period for which
9 the employee is paid; (g) the name of the employee and only the last four digits of his or her
10 social security number or an employee identification number other than a social security
11 number; (h) the name and address of the legal entity that is the employer; and (i) all applicable
12 hourly rates in effect during the pay period and the corresponding number of hours worked at
13 each hourly rate by the employee. The deductions made from payment of wages shall be
14 recorded in ink or other indelible form, properly dated, showing the month, day, and year, and
15 a copy of the statement and the record of the deductions shall be kept on file by the employer
16 for at least three years at the place of employment or at a central location within the State of
17 California.

18 130. California Labor Code § 1174 and Section 7 of Wage Order 5 (“Records”)
19 require employers to maintain records including, but not limited to, employees’ total hours
20 worked, an accurate hourly rate, accurate computation of net wages and when employees begin
21 and end each work period.

22 131. Through CAPITAL’S conduct during the applicable statutory period including,
23 but not limited to, the conduct set forth herein, CAPITAL knowingly and intentionally failed to
24 provide accurate itemized wage statements reflecting, among other things, accurate hours
25 worked, accurate gross wages earned, accurate hourly rate, accurate method of computation for
26 net wages paid to Plaintiffs and Class Members, including but not limited to as a result of its
27 knowing and intentional misclassification of the above name Plaintiffs as independent
28

1 contractors, and failed to maintain the records required by California Labor Code §§ 226(a)
2 and 1174.

3 132. California Labor Code § 226(e) obligates an employer who fails to maintain
4 employment records in accordance with California Labor Code § 226(a) to pay each aggrieved
5 employee one hundred dollars (\$100) per pay period that the employer failure to maintain
6 employment records up to a maximum of four thousand dollars (\$4,000). This penalty is
7 separate and distinct from the PAGA penalties discussed below.

8 133. California Labor Code § 226(h) states “An employee may also bring an action
9 for injunctive relief to ensure compliance with this section, and is entitled to an award of costs
10 and reasonable attorney’s fees.”

11 134. Each Plaintiff and other putative Class I, II, and III members suffered injuries as
12 a result of CAPITAL’S intentional and knowing failure to provide to them and maintain the
13 writings required by California Labor Code § 226(a) and Wage Order 5, as set forth herein.
14 CAPITAL’S failure to provide and maintain accurate statements, as alleged herein, left each
15 Plaintiff and other putative Class I, II, and III, on information an belief, without the ability to
16 know, understand and question the hours worked and wages earned and due. As a direct result,
17 Plaintiffs and members of putative Class I, II, and III have suffered and continue to suffer
18 substantial injuries, losses and actual damages related to CAPITAL’S violations, including lost
19 wages, lost interest on such wages, and expense and attorney’s fees in seeking to compel
20 Defendant to fully perform its obligations.

21 135. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
22 seek an award of all monies owed resulting from CAPITAL’S violations, other damages
23 according to proof, recovery of applicable penalties, interest as allowed by law, reasonable
24 attorney’s fees and costs of suit, injunctive relief, and any other permitted remedies.

25
26 **TENTH CLAIM FOR RELIEF**
(Failure to Pay Timely Wages During Employment in Violation of California Labor Code § 204)

27 136. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
28 re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

137. California Labor Code § 204 provides the timeframes by which employers must pay wages due to their employees. Pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked, “all wages...earned by any person in any employment are due and payable twice during each calendar month, in days designated in advance by the employer as the regular paydays.”

138. Through CAPITAL'S conduct during the applicable statutory period including, but not limited to, the conduct set forth herein, including that alleged on information and belief, CAPITAL, its agents, managers, superintendents, or officers, directly and/or indirectly failed to pay each Plaintiff and other putative Class I, II, and III members their wages within the time requirements set forth in California Labor Code § 204.

139. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members, seek an award of all monies owed resulting from CAPITAL'S violations, other damages according to proof, recovery of applicable penalties, interest as allowed by law, reasonable attorney's fees and costs of suit, injunctive relief, and any other permitted remedies.

ELEVENTH CLAIM FOR RELIEF

(Failure to Pay Wages Due Upon Termination in Violation of
California Labor Code §§ 201- 203)

140. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members, re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

141. California Labor Code § 201 requires an employer who discharges an employee to pay all compensation due and owing to said employee immediately upon discharge. California Labor Code § 202 requires an employer to promptly pay compensation due and owing to said employee within seventy-two (72) hours of that employee's termination of employment by resignation.

142. California Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required under California Labor Code §§ 201-202, then the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

1 143. Through CAPITAL’S conduct during the applicable statutory period including,
2 but not limited to, the conduct set forth herein, CAPITAL willfully failed to provide JOSE
3 HERNANDEZ, JUAN HERNANDEZ, ALFARO, AGUILAR and GALINDO and other
4 putative Class II and III members, whose employment with CAPITAL ended at any point in
5 the four years preceding the filing of the complaint or tolling thereof, with all wages due and
6 owing, including minimum wages, wages for “all hours worked”, overtime wages, within the
7 time requirements set forth in California Labor Code §§ 201(a) and 202(a).

8 144. As a direct result of CAPITAL’S violations as set forth hereinabove, each
9 Plaintiff and other members of putative Class I, II, and III have suffered and continue to suffer,
10 substantial losses related to the use and enjoyment of such wages, as the result of CAPITAL’S
11 failure to maintain records in compliance with the California Labor Code and Wage Order 5
12 including but not limited to the expenses and attorney’s fees and costs in seeking to compel
13 CAPITAL to fully perform its obligation under state law, all to their respective damage in
14 amounts according to proof at trial and within the jurisdictional limitations of this Court.

15 145. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
16 seek an award of all monies owed resulting from CAPITAL’S violations, other damages
17 according to proof, recovery of applicable penalties, interest as allowed by law, reasonable
18 attorney’s fees and costs of suit, injunctive relief, and any other permitted remedies.

19 **TWELFTH CLAIM FOR RELIEF**

20 (California Private Attorney General Act (“PAGA”), California Labor Code §§ 2699 *et seq.*)

21 146. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
22 re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

23 147. At all times herein set forth, the Labor Code Private Attorneys General Act of
24 2004 (“PAGA”) was applicable to Plaintiffs’ employment by CAPITAL.

25 148. At all times herein set forth, PAGA provided that any provision of law under the
26 California Labor Code that provides for a civil penalty to be assessed and collected by the
27 Labor and Workforce Development Agency (“LWDA”) for violations of the California Labor
28 Code may, as an alternative, be recovered through a civil action brought by an aggrieved

1 employee on behalf of himself and other current or former employees pursuant to procedures
2 outlined in California Labor Code § 2699.3.

3 149. A civil action under PAGA may be brought by an “aggrieved employee,” who
4 is any person that was employed by the alleged violator and against whom one or more of the
5 alleged violations was committed.

6 150. Plaintiffs were employed by CAPITAL and the alleged violations were
7 committed against them during their time of employment and they are, therefore, aggrieved
8 employees. Plaintiffs and other employees are “aggrieved employees” as defined by California
9 Labor Code § 2699(c) in that they are all current or former employees of CAPITAL, and one
10 or more of the alleged violations were committed against them.

11 151. Pursuant to California Labor Code § 2699.3, an aggrieved employee, including
12 Plaintiffs, may pursue a civil action arising under PAGA after the following requirements have
13 been met:

14 (a) The aggrieved employee shall give written notice by certified mail
15 (hereinafter “Employee’s Notice”) to the LWDA and the employer of
16 the specific provisions of the California Labor Code alleged to have
17 been violated, including the facts and theories to support the alleged
18 violations.

19 (b) With respect to those Labor Code violations listed in Labor Code
20 § 2699.5, the LWDA shall provide notice (hereinafter “LWDA Notice”)
21 to the employer and the aggrieved employee by certified mail that it
22 does not intend to investigate the alleged violations within thirty (30)
23 calendar days of the postmark date of the Employee’s Notice. Upon
24 receipt of the LWDA Notice, or if the LWDA Notice is not provided
25 within thirty-three (33) calendar days of the postmark date of the
26 Employee’s Notice, the aggrieved employee may commence a civil
27 action pursuant to California Labor Code Section 2699 to recover civil
28

1 penalties in addition to any other penalties to which the employee may
2 be entitled.

3 (c) With respect to Labor Code violations other than those listed in Labor
4 Code §2699.5, the employer may cure the alleged violation within the
5 thirty-three (33) calendar days of the postmark date of the notice. The
6 employer shall give written notice by certified mail within that period of
7 time to the aggrieved employee or representative and the LWDA if the
8 alleged violation is cured. If the alleged violation is not cured within the
9 33-day period, the employee may commence a civil action pursuant to
10 Section 2699.

11 152. On January 21, 2014, Plaintiffs provided written notice by certified mail to the
12 LWDA and CAPITAL of the specific provisions of the California Labor Code alleged to have
13 been violated, including the facts and theories to support the alleged violations. (A true and
14 correct copy of that written notice is attached hereto as Exhibit A.)

15 153. Prior to initiating this action, more than thirty-three (33) days passed since the
16 mailing of Plaintiffs' letter and Plaintiffs did not and have not received a letter from the
17 LWDA stating its intent to investigate Plaintiffs' claims against CAPITAL nor did Plaintiffs
18 receive a letter from CAPITAL indicating that it had cured any of the alleged violations.

19 154. Plaintiff has satisfied the administrative prerequisites under California Labor
20 Code § 2699.3(a) to recover civil penalties against CAPITAL for violations of California
21 Labor Code stated above.

22 155. California Labor Code § 226.8 provides that an employer who has engaged in a
23 pattern or practice of misclassifying employees as independent contractors shall be subject to a
24 civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five
25 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
26 permitted by law.

27 156. CAPITAL has engaged in a practice of misclassifying SANCHEZ, CAMEY,
28 RAMIREZ, and other putative Class I members, as independent contractors, and SANCHEZ,

1 CAMEY, RAMIREZ and other putative Class I members seek recovery of civil penalties of
2 not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars
3 (\$25,000) for each violation.

4 157. California Labor Code § 225.5 provides that any employer that unlawfully
5 withholds wages due any employee in violation of California Labor Code §§ 221, 223 shall be
6 subject to civil penalties including one hundred dollars (\$100) for the initial violation, and two
7 hundred dollars (\$200) for subsequent violations per employee per pay period plus twenty-five
8 percent (25%) of the amount unlawfully withheld.

9 158. CAPITAL has unlawfully withheld wages from Plaintiffs and Class Members
10 and is therefore subject to PAGA penalties related to its violation of California Labor Code
11 §§ 221 and 223 in the amount of one hundred dollars (\$100) for the initial violation, and two
12 hundred dollars (\$200) for subsequent violations per employee per pay period plus twenty-five
13 percent (25%) of the amount unlawfully withheld.

14 159. California Labor Code § 558 provides that any employer who violates Chapter 1
15 of Part 2 of Division 2 of the Labor Code, or any provisions regulating hours and days of work
16 in any order of the Industrial Welfare Commission shall be subject to civil penalties including
17 fifty dollars (\$50) for the initial violation, and one hundred dollars (\$100) for subsequent
18 violations per employee per pay period in which violation occurred.

19 160. CAPITAL has violated California Labor Code §§ 201-203, 226, 226.7, 510,
20 512, 1174, 1174.5, 1197, 1198, and Wage Order 5 and is therefore subject to civil penalties in
21 the amount of fifty dollars (\$50) for the initial violation, and one hundred dollars (\$100) for
22 subsequent violations per employee per pay period in which each of the violations occurred.

23 161. California Labor Code § 2699(f)(2) states that for all provisions of the
24 California Labor Code for which a civil penalty is not specified the civil penalty is one hundred
25 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
26 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
27 violation.

1 162. CAPITAL is therefore subject to PAGA penalties related to CAPITAL’S
2 violation of California Labor §§ 204, 432.5, 2802, 2804 in the amount of one hundred dollars
3 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
4 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

5 163. Pursuant to California Labor Code § 2699, Plaintiffs seek to recover civil
6 penalties on behalf of themselves and other aggrieved current and former employees of
7 CAPITAL. The exact amount of the applicable penalty is all in an amount to be shown
8 according to proof at trial.

9 **THIRTEENTH CLAIM FOR RELIEF**
10 (Unfair Business Practices in Violation of
 California Business & Professions Code §§ 17200, *et seq.*)

11 164. Each Plaintiff, on behalf of themselves and putative Class I, II, and III members,
12 re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

13 165. California Business & Professions Code § 17200 states: “As used in this
14 chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business
15 act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by
16 Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and
17 Professions Code.”

18 166. During the relevant period, CAPITAL has engaged in unfair business practices
19 in California by practicing, employing, and utilizing the unlawful employment practices
20 outlined in the preceding paragraphs all in violation of California law and Wage Order 5.
21 CAPITAL’S use of such practices constitutes an unfair business practice, unfair competition,
22 and provides CAPITAL an unfair advantage over its competitors that do business in the State
23 of California and comply with their obligations to properly provide employment conditions in
24 compliance with the law and pay employees for all earned wages and compensation as required
25 by law.

26 167. CAPITAL’S violations of the California Civil Code, the California Labor Code,
27 and Wage Order 5 and its scheme to lower its payroll costs as alleged herein constitute
28 unlawful business practices because these actions were done in a systematic manner over a

1 period of time to the detriment of each Plaintiff and other members of putative Class I, II, and
2 III. The acts complained of herein occurred within the four (4) years preceding the filing of
3 this complaint and include, but are not limited to, failure to: (i) classify janitorial crews
4 properly as employees and present them with agreements not prohibited by law; (ii) pay proper
5 wages including that of minimum and overtime wages and wages for all hours worked; (iii)
6 indemnify employees; (iv) pay timely wages upon termination of employment; and (v)
7 maintain accurate records and provide and maintain accurate itemized wage statements.

8 168. CAPITAL engaged in the above-mentioned acts of unlawful, deceptive, and
9 unfair business practices prohibited by California Business and Professions Code §§ 17200, *et*
10 *seq.*, including those set forth in the preceding paragraph, thereby depriving each Plaintiff and
11 other members of putative Class I, II, and III the minimum working condition standards and
12 conditions due, including those under the California Labor Code and Wage Order 5.

13 169. As a result of CAPITAL'S unfair competition and unlawful business practice,
14 as alleged herein, each Plaintiff and other members of putative Class I, II, and III have suffered
15 injury in fact and lost money or property. Plaintiffs have been deprived of the rights to wages
16 and benefits due including those as alleged herein.

17 170. Pursuant to California Business & Professions Code § 17203, each Plaintiff is
18 entitled to seek restitution of all wages and other monies owed on behalf of themselves and
19 other members putative Class I, II, and III belonging to them, including interest thereon, which
20 CAPITAL wrongfully withheld from them and retained for itself by means of its unlawful and
21 unfair business practices.

22 171. Each Plaintiff and other members of putative Class I, II, and III are entitled to
23 an injunction and other declaratory and equitable relief against such practices to prevent future
24 damage for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

25 172. The illegal conduct alleged herein is continuing and there is no indication that
26 CAPITAL will not continue such activity into the future. If CAPITAL is not enjoined from the
27 conduct set forth in this Complaint, it will continue to fail to pay the wage and compensation
28

1 required to be paid and will fail to comply with other requirements of the California Labor
2 Code and Wage Order 5.

3 173. As a direct and proximate result of CAPITAL'S conduct, CAPITAL has
4 received and will continue to receive monies that rightfully belong to members of the general
5 public who have been adversely affected by CAPITAL'S conduct, as well as to Plaintiffs by
6 virtue of unpaid wages and other monies.

7 174. Each Plaintiff and other members of putative Class I, II, and III are entitled and
8 seek any and all available remedies including but not limited to restitution and recovery of
9 reasonable attorney's fees and costs pursuant to California Code of Civil Procedure § 1021.5,
10 California Business and Professions Code § 17200 *et seq.*, the substantial benefit doctrine,
11 and/or the common fund doctrine.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray for damages for judgment against CAPITAL as follows:

- 14 (a) For a declaration that (i) SANCHEZ, CAMEY, RAMIREZ and the members of
15 putative Class I are employees of CAPITAL and that any agreement that
16 purports to state otherwise is null and void, and (ii) any agreement that purports
17 to waive the protections of the California Labor Code and Wage Order 5 are
18 null and void;
- 19 (b) For injunctive relief to the extent permitted by law including, but not limited to,
20 as provided by the California Labor Code § 226(h), and California Business and
21 Professions Code § 17200 *et seq.*;
- 22 (c) For restitution as provided by California Business and Professions Code
23 § 17200 *et seq.*;
- 24 (d) For an order requiring CAPITAL to restore and disgorge all funds to each
25 affected person acquired by means of any act or practice declare by this Court to
26 be unlawful, unfair or fraudulent and, therefore, constituting unfair competition
27 under California Business and Professions Code § 17200 *et seq.*;
- 28

- 1 (e) For an award of unpaid wages, including minimum and overtime wages, and
2 wages for “all hours worked” to the extent permissible by law to each affected
3 person;
- 4 (f) For an award of any and all monies required to be paid and/or reimbursed to
5 each Plaintiff and other members of putative Class I, II, and III including but
6 not limited to monies required to be indemnified ;
- 7 (g) For penalties to the extent permitted pursuant to the California Labor Code and
8 Wage Order 5 including, but not limited to, waiting time penalties under
9 California Labor Code § 203, penalties under California Labor Code § 226(e),
10 penalties under California Labor Code §226.7, and PAGA penalties;
- 11 (h) For an award of damages to the extent permissible by the California Labor Code
12 and California Civil Code, including California Labor Code § 226(e) and
13 California Civil Code §§ 1709, 1710, and 3333;
- 14 (i) For an award of liquidated damages to the extent permissible by California
15 Labor Code § 1194.2;
- 16 (j) For pre-judgment and post-judgment interest to the extent permitted by law
17 including, but not limited to, California Labor Code §§ 218.6 and 1194;
- 18 (k) For reasonable attorney’s fees and cost of suit and, to the extent permitted by
19 law, including pursuant to California Labor Code §§ 218.5, 226, 1194, 2698 *et*
20 *seq.*, and California Code of Civil Procedure § 1021.5; and
- 21 (l) An award of such other and further relief as this Court deems proper and just.

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Dated: February 23, 2015

By: /s/
Amanda L. Riddle
Attorneys for Plaintiffs

LAW OFFICES OF PARVIZ DARABI

By: _____ /s/
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